

Before the **FCC MAIL SECTION**
Federal Communications Commission
Washington, D.C. 20554

JUL 15 4 02 PM '94

MM Docket No. 94-79

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b), RM-8493
Table of Allotments,
FM Broadcast Stations.
(Pine Hill, Alabama)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 29, 1994; Released: July 11, 1994

Comment Date: September 1, 1994

Reply Comment Date: September 16, 1994

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by R. J. Miller ("petitioner") requesting the allotment of FM Channel 244A to Pine Hill, Alabama, as that community's first local aural transmission service. Petitioner stated that he, or an organization of which he is a part, will apply for Channel 244A if it is allotted to Pine Hill, as requested.

2. We believe the public interest would be served by proposing the allotment of Channel 244A to Pine Hill, Alabama, since it could provide a first local aural transmission service to the community.

Technical Statement

3. A staff analysis has determined that Channel 244A can be allotted to Pine Hill consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, provided the transmitter therefor is located at least 6.2 kilometers (3.9 miles) northwest of the community at coordinates North Latitude 32-01-38 and West Longitude 87-37-23.¹ The site restriction is required to avoid a short spacing to the authorized site for Station WJUS(FM), Channel 243C, Fort Walton Beach, Florida, at coordinates North Latitude 30-45-04 and West Longitude 86-42-38.

4. We believe the public interest would be served by proposing the allotment of Channel 244A to Pine Hill, Alabama, since an interest has been expressed in providing that community with its first local aural transmission service. Therefore, we will seek comments on the proposed

amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, to include Pine Hill, Alabama, as follows:

| City | Present | Channel No. |
|--------------------|---------|------------------|
| Pine Hill, Alabama | -- | Proposed 244A |

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before September 1, 1994, and reply comments on or before September 16, 1994, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

R. J. Miller
Route 1, Box 242
Letohatchee, AL 36047

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who

¹ Petitioner proposed a transmitter site located 8.4 kilometers (5.2 miles) northwest of Pine Hill at coordinates North Latitude 32-01-24 and West Longitude 87-39-40. However, in determining compliance with Section 73.207(b) of the Commission's Rules, if a new proposed allotment requires a site restriction, the Commission will endeavor to impose that which is the least restric-

tive theoretical site from the intended community of license. See *Fort Myers, Florida*, 3 FCC Rcd 2671 (1988). It is not until the application stage that the actual availability of a particular site is demonstrated. See *West Palm Beach, Florida*, 3 FCC Rcd 5810 (1988).

filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be

served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.